

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA .
vs. . H-09-CR-336
. HOUSTON, TEXAS
. APRIL 26, 2010
. 2:47 P.M.
BRENT A. CARTER and .
MICHAEL N. SWETNAM, JR. .
.

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

TESTIMONY OF WARD COOK, VOL. 1 OF 2
EXCERPTED FROM TRIAL DAY 5 OF 9

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Proceedings recorded by mechanical stenography, transcript
produced by computer-aided transcription.

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Costa Direct of Cook

P R O C E E D I N G S

(Jury present)

THE COURT: Members of the jury, please be seated.

MR. COSTA: United States calls Ward Cook, your Honor.

THE COURT: Mr. Cook, yes, sir.

This is going to be your seat. Before you take your seat, Mrs. Loewe will administer the oath.

THE CASE MANAGER: Do you solemnly swear the testimony you're about to give in the matter now before the Court will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

THE COURT: That will be your seat. Try to adjust the mic so you can speak directly into it.

WARD COOK, DULY SWORN, TESTIFIED:

DIRECT EXAMINATION

BY MR. COSTA:

Q. Good afternoon, Mr. Cook.

A. Hi.

Q. If you can just remember to try to speak slowly. And there's also some water there, in the pitcher, if that will help.

Would you please introduce yourself to the jury?

A. My name is Ward Cook.

Q. And are you currently employed?

A. No. I'm retired.

Costa Direct of Cook

02:48 1 Q. Enjoying retirement?

2 A. You bet.

3 Q. And where do you currently reside?

4 A. I live in San Benito.

02:48 5 You want the address?

6 Q. That's good enough.

7 A. Okay. San Benito, near Harlingen, Texas.

8 Q. Is that also near Brownsville?

9 A. Yes.

02:48 10 Q. All in Cameron County?

11 A. Yes.

12 Q. And how long have you lived down in Cameron County?

13 A. All my life.

14 Q. Born and raised there?

02:48 15 A. It's a long time.

16 Q. And you said you're retired now. When did you retire?

17 A. Last October, '09.

18 Q. And were you working at Valley Baptist Health System before

19 you retired?

02:48 20 A. That's correct.

21 Q. And whose decision was it for you to stop working there?

22 A. Mine. I actually -- they tried to get me to retire a year

23 earlier -- I tried to retire a year earlier, and they made me

24 stay an extra year.

02:49 25 Q. And when did you first go to work for Valley Baptist?

Costa Direct of Cook

02:49

1 A. 1989.

2 Q. What were you doing before that?

3 A. I was a claims manager for Trinity Insurance Companies for
4 South Texas.

02:49

5 Q. What were you doing as a claims manager with Trinity, just
6 very generally?7 A. I was responsible for handling all insurance claims for
8 Trinity Companies: automobile claims, property claims, that
9 kind of thing.

02:49

10 Q. Does that mean that when somebody had a claim with a
11 Trinity insurance policy you would review that claim and decide
12 whether and how it was going to be paid?13 A. Yes. I had an office of adjustors who went out and handled
14 the claims.

02:49

15 Q. So, if there was a car wreck, they would go look into it,
16 decide how the claim should be handled?

17 A. Yes, sir.

18 Q. How did you go from that job to working at Valley Baptist
19 in 1989?

02:50

20 A. Well, Valley Baptist developed a self-insurance plan to
21 handle all their professional liability claims.22 And, actually, Mike Swetnam introduced me to the
23 CEO at Valley Baptist and recommended that they -- Valley
24 Baptist hire me to handle all their claims.

02:50

25 Q. So, you knew Mr. Swetnam back in 1989?

Costa Direct of Cook

02:50 1 A. Yes, I did.

2 Q. When did you first meet Mr. Swetnam?

3 A. I would say probably 1984, '85.

4 Q. And how did you know him?

02:50 5 A. Well, Mr. Swetnam was handling Trinity Insurance, among

6 other companies; and whenever one of their Trinity clients had

7 an accident or a claim, I would handle the claim for them. And

8 that's how I met Swetnam.

9 Q. So, he was already -- in the Eighties, he was an agent down

02:50 10 there in South Texas?

11 A. Yes.

12 Q. He's the one that introduced you to the folks at Valley

13 Baptist?

14 A. Yes, that's correct.

02:51 15 Q. And when you came on with Valley Baptist in 1989, what was

16 your job title?

17 A. Claims manager.

18 Q. And that was -- when you talk about the self insurance,

19 with the professional liability?

02:51 20 A. Yes. It was professional liability, medical malpractice

21 cases, and general liability, among other things.

22 Q. And, so, what did you do in that position?

23 A. I handled all complaints and claims against the medical

24 center, from very minor things to major med-mal cases.

02:51 25 Q. And did you stay with that job title your whole time at

Costa Direct of Cook

02:51

1 Valley Baptist or did it change?

2 A. The risk manager retired in 1997, and I was promoted to
3 vice-president in charge of their risk management as well as
4 continued to handle the claims.

02:52

5 Q. And as vice-president for risk management, did you have
6 some additional duties?

7 A. I acquired quite -- several new responsibilities, yes.

8 Q. And what -- did some of those responsibilities have to do
9 with the insurance that the hospital would purchase each year?

02:52

10 A. Yes. I began to oversee the entire insurance program for
11 the hospital.

12 Q. And when you -- when did you become vice-president of risk
13 management?

14 A. 1997.

02:52

15 Q. And when you took that position in 1997, was the hospital
16 already working with some agents who were helping provide the
17 insurance policies each year?

18 A. Yes.

19 Q. Who were those agents?

02:52

20 A. Smith-Reagan Insurance Agency and Swetnam Insurance
21 Services.

22 Q. And how would that process work each year, in terms of the
23 hospital deciding which policies it was going to purchase?

24 A. Well, they would basically renew policies from the prior
25 year, simply a matter of renewal. The hospital had been

02:53

Costa Direct of Cook

02:53 1 covered by Smith-Reagan for 30, 40 years; and it was just a
2 continuing process.

3 Q. Did you trust the Smith-Reagan agency?

4 A. Yes, sir.

02:53 5 Q. Did you trust Mr. Swetnam, who you had known since 1984?

6 A. Yes, sir.

7 Q. And do you see Mr. Swetnam in court here today?

8 A. Yes.

9 Q. Can you point out where he is and what he's wearing?

02:53 10 A. He's right behind you, over there. (Indicating).

11 Q. Is it difficult to be testifying in this case, given
12 Mr. Swetnam -- you've known him since 1984?

13 A. It's not easy.

14 Q. You said a lot of times there were just renewals of the
02:53 15 prior year policies. Is that right?

16 A. That's correct.

17 Q. What if there was some new area of insurance the hospital
18 needed or the hospital wanted to change policies; who would go
19 and look for those new policies?

02:54 20 A. Well, I don't recall that we did that until around 2005.

21 And at that point in time the responsibilities for exploring
22 different insurance options was taken over by Mr. Springfield,
23 the best I remember it.

24 I was sort of taken out of the picture as to the
02:54 25 decisions concerning the insurance program.

Costa Direct of Cook

02:54 1 Q. And was Mr. Springfield the CEO at that time?

2 A. That's correct.

3 Q. Was Manny Vela also involved in some insurance policy
4 decisions around 2005?

02:55 5 A. Yes. Manny Vela is our corporate counsel, and I reported
6 to him. And he was giving me instructions as to what decisions
7 were made on the major insurance policies.

8 Q. And would you still, in your office, keep and retain the
9 actual policies each year, that the hospital believed it had
10 purchased?

02:55 11 A. That's correct.

12 Q. So, Mr. Springfield was involved in the decision-making;
13 but you still maintained the policies. Is that fair?

14 A. Yes.

02:55 15 Q. During this time period, 2005-2006, how frequent was your
16 interaction with Mr. Swetnam?

17 A. I talked to him on the phone several times a month.

18 Q. And did you -- during this time period, did you come to
19 know an individual named Brent Carter?

02:55 20 A. Yes.

21 Q. Do you know about what year you might have met Brent
22 Carter?

23 A. I think it was 2005.

24 Q. And did you ever see him at the hospital?

02:56 25 A. Yes.

Costa Direct of Cook

02:56 1 Q. Would he ever stop by and stop in your office and say
2 hello?
3 A. Yes, sir.

02:56 4 Q. Was it usually just to visit you or would he be visiting
5 other people during those visits to the hospital?
6 A. I believe most of the time he was there to see someone else
7 and would just stick his head in my office and say hello.

8 Q. Do you know who else at the hospital he had close
9 relationships or frequent contact with?

02:56 10 A. I think primarily Mr. Springfield.

11 Q. What about Mr. Vela and Mr. Carter?
12 A. (No response).

13 Q. Do you know anything about how often they saw each other or
14 their relationship?

02:56 15 A. No, I don't really.

16 Q. Okay. Was there any talk -- again, on this 2005-2006 time
17 period -- I think you've already said the hospital used
18 Smith-Reagan maybe 30, 40 years -- was there any talk within
19 the hospital of actually thinking about changing insurance
02:57 20 agents?
21 A. I didn't hear any discussions about it.

22 Q. Okay. Did you ever have any discussions with Mr. Swetnam
23 about his belief that there was interest, in the hospital, in
24 looking at other agents?

02:57 25 A. Yes.

Costa Direct of Cook

02:57

1 Q. What did he say about that?

2 A. Well, he mentioned the fact that the hospital had retained
3 some consultants or experts to come in and assess the program.

4 Q. What was his reaction to the hospital doing that?

02:57

5 A. Well, he wasn't very happy about it.

6 THE COURT: In your experience, is that an unusual
7 procedure or does that happen customarily within big
8 institutions every so often?

9 THE WITNESS: I don't know why any institution
10 wouldn't do that. But this is the only institution I've been
11 in, and I wasn't familiar with the consultants that were
12 brought in.

13 THE COURT: So, it was the first time in your career?

14 THE WITNESS: Yes, sir.

02:58

15 BY MR. COSTA:

16 Q. And that had been since 1989, at Valley Baptist?

17 A. That's correct.

18 Q. And this time, around 2005, that was the first time you
19 have any information about outside consultants coming in to
20 review the insurance program?

02:58

21 A. Yes, sir.

22 Q. And that's what you said Mr. Swetnam was unhappy about?

23 A. Yes, sir.

24 Q. And you said you had this -- you talked about your
25 interaction with Mr. Swetnam. Of the agents we've discussed --

02:58

Costa Direct of Cook

02:58 1 Mr. Swetnam, Mr. Carter and Mr. Reagan -- was it Mr. Swetnam
2 who you typically had discussions --

3 A. Yes, sir.

4 Q. -- about substantive insurance policy issues with?

02:58 5 A. Yes, sir.

6 Q. I want to direct your attention to 2006. Do you recall a
7 discussion with Mr. Swetnam about problems or difficulties in
8 the market, for hurricane coverage?

9 A. Yes, sir.

02:59 10 Q. What did Mr. Swetnam say was the issue with getting
11 hurricane coverage in 2006?

12 A. Well, he told me that because of Hurricane Katrina and the
13 other hurricanes along about that time in Florida -- I think
14 there was three in one year over there -- that the major
02:59 15 property insurance companies were withdrawing placing coverage
16 for seacoast territories; they didn't want to write it anymore;
17 they only would write small layers of coverage for certain
18 commercial risks. And he said that our costs for purchasing
19 property insurance were going to skyrocket.

02:59 20 Q. And, so, had Hurricane Katrina just been the previous
21 hurricane season, as you can recall?

22 A. I can't recall exactly when Katrina was.

23 THE COURT: Why don't you assume it was late August,
24 early September of 2005?

03:00 25 THE WITNESS: Okay.

Costa Direct of Cook

03:00

1 BY MR. COSTA:

2 Q. And you just said this discussion with Mr. Swetnam was
3 around 2006?

4 A. Approaching the 2006-2007 policy period.

03:00

5 Q. Okay. And when he told you that hurricane insurance was
6 going to skyrocket because of Katrina, did he say where he was
7 going to be able to find any coverage for higher layers of
8 damage?

9 A. I don't think we discussed layers or company -- companies.

03:00

10 I was relying on him to find the coverage that we needed.

11 Q. Did he ever -- during 2006, did he ever have an unusual
12 request about where an insurance policy had to be consummated?

13 A. Yes.

14 Q. Tell the jury about that.

03:01

15 A. Mr. Swetnam told me that he could save us money by
16 purchasing a layer of insurance through a non-admitted carrier.
17 That's a carrier -- insurance company that's not licensed to do
18 business in the State of Texas.

19 Q. And was that going to be for hurricane coverage?

03:01

20 A. Yes, windstorm.

21 Q. And is -- "named windstorm," is that what coverage for
22 hurricanes is called?

23 A. I believe it just covered named hurricanes.

24 Q. And named tropical storms, as well?

03:01

25 A. Yes, I think so.

Costa Direct of Cook

03:01 1 Q. So, that's why it's called "named windstorm"?

2 A. Uh-huh.

3 Q. And this is around the same time period that he's talking
4 about the difficulties in the insurance market because of
03:01 5 Katrina?

6 A. Yes, sir.

7 Q. Was it your idea or his idea to get the windstorm coverage
8 offshore?

9 A. It was his recommendation.

03:02 10 Q. And, so, what did he say you were going to have to do to
11 make this policy effective?

12 A. He told us that we would need to do the deal outside the
13 United States or outside the State of Texas and that he
14 recommended that we drive across the -- into Mexico and have
03:02 15 dinner and make the deal there.

16 Q. Did you go to Mexico for dinner?

17 A. Yes, we did.

18 Q. Who attended?

19 A. Mike and Mr. Carter and Manny Vela and Lesley Freeberg from
03:02 20 the hospital and myself.

21 Q. Did Mr. Swetnam give you any documents that evening?

22 A. Yes, sir.

23 Q. Do you recall what type of documents those were?

24 A. They looked sort of like insurance binders.

03:02 25 Q. What is an "insurance binder"?

Costa Direct of Cook

03:02 1 A. It's an interim or temporary certificate of insurance that
2 you hold. It proves you've got insurance coverage until such
3 time as you receive the actual policies.

4 Q. Mr. Cook, I'm going to hand you what are already in
03:03 5 evidence as Government Exhibits 1, 1A and 1B, ask you to look
6 at those and tell me if you recognize them.

7 A. Yes. Yes, I have. I've seen these.

8 Q. What are these documents I just showed you?

9 A. Those are three documents that Mr. Swetnam gave me in
03:03 10 Mexico.

11 Q. At this dinner we're talking about?

12 A. Yes, sir.

13 Q. And if you look in the top left corner, there's some
14 handwriting. Whose handwriting is that?

03:04 15 A. That's mine.

16 Q. And what does it say?

17 A. It says, "Received Nuevo Progreso, Tamaulipas, Mexico,
18 August 29th, 2006." And it's my initials on there.

19 Q. August 29th, 2006, is that when the dinner was in Mexico?

03:04 20 A. Yes.

21 Q. When did you write this on there?

22 A. The following day, at my office.

23 Q. And did you file these away in your office that next day?

24 A. Yes.

03:04 25 Q. And this shows a total premium of \$936,000. Does that

Costa Direct of Cook

03:04

1 sound familiar?

2 A. Yes.

3 Q. It says here, the last sentence, "This document is intended
4 for use as evidence that insurance, described herein, has been
5 effected," and it goes on.

03:04

6 And is that sentence there, "This document is
7 evidence that insurance has been effected," is that what you
8 just described as your understanding of what a "binder" is?

9 A. Yes.

03:05

10 Q. So, when Mr. Swetnam handed you these documents at dinner
11 on August 29th, 2006, did you believe the hospital had
12 hurricane coverage, as stated?

13 A. Yes, sir, effective on the effective date. I think it was
14 September 1st.

03:05

15 Q. Right. And I'll show you that you're right. "September 1,
16 2006," that was your understanding?

17 A. Yes, sir.

18 Q. Did Mr. Swetnam give you any indication when he handed you
19 those documents that this -- there might be some issues or this
20 wasn't a done deal yet?

03:05

21 A. No, sir.

22 Q. Did Mr. Carter raise any concerns at dinner that the
23 insurance was not yet a done deal?

24 A. No, sir.

03:05

25 Q. Was most of the discussion at dinner about business or just

Costa Direct of Cook

03:05 1 personal stuff, once you got these documents handed to you?

2 A. There was no discussion at all about insurance that night.

3 Q. Basically, it was just where Mr. Swetnam handed you these

4 documents?

03:06 5 A. That's all.

6 Q. Would you pay for that -- have the hospital pay that

7 \$936,000 just upon receipt of those cover notes?

8 A. No. I would have received an invoice.

9 Q. And when the invoice is -- who were those invoices

03:06 10 typically from?

11 A. Probably Swetnam Insurance Services.

12 Q. And when you receive an invoice like that, what do you do?

13 A. I send a request for payment down to the accounting

14 department, along with a copy of the invoice.

03:06 15 Q. And then accounting issues the check?

16 A. Yes, sir.

17 Q. Do you recall when that 936 -- just generally how long

18 after the dinner in Mexico that \$936,000 was paid?

19 A. I can't remember, but I think it was just a few days at the

03:07 20 most.

21 Q. I'll show you what is in evidence as Government's 1F. Do

22 you recognize that as a Valley Baptist check, Mr. Cook?

23 A. Yes.

24 Q. And it's "Pay to the Order Of" Swetnam Insurance Services?

03:07 25 A. Yes.

Costa Direct of Cook

03:07 1 Q. For that \$936,000 amount?

2 A. That's correct.

3 Q. And it's dated September 1st. Do you see that?

4 A. Yes.

03:07 5 Q. So, that would indicate it was issued very soon after the

6 dinner on August 29th. Is that right?

7 A. Yes, sir.

8 Q. And I want to show you what is in evidence as Government's

9 13.

03:08 10 Are you able to see that on the screen, Mr. Cook?

11 A. Yes, sir.

12 Q. It's a letter supposedly dated September 7, 2006, to

13 Mr. James Springfield. Do you recognize that as Swetnam

14 Insurance Services' letterhead?

03:08 15 A. Yes, sir.

16 Q. And it says at the bottom, "Sincerely, Michael Swetnam,"

17 with no signature.

18 Do you recall seeing this in September of 2006?

19 A. No, sir.

03:08 20 Q. Have you seen it before today, though?

21 A. Yes, sir.

22 Q. When did you first see it?

23 A. Sometime after the civil suit was filed in this case, I saw

24 it in some discovery we received.

03:08 25 Q. So, was this in your files there at the hospital?

Costa Direct of Cook

03:08 1 A. No, sir.

2 Q. Would Mr. Swetnam -- did he correspond with the hospital on

3 occasion?

4 A. Yes.

03:09 5 Q. Would he typically sign documents that he sent to the

6 hospital?

7 A. Yes, sir.

8 Q. Have you, to this day, seen a signed copy of this letter?

9 A. No, sir.

03:09 10 Q. If you want to take a second to just skim over this -- look

11 over this letter; and if you can tell the jury, what is he

12 saying about the Ariel and Landsdow cover notes that he had

13 just given you on August 29th in Mexico?

14 A. Said that, "They do not insure your risk at the hospital."

03:09 15 Q. And this is September 7th, supposedly six days after that

16 check we just saw?

17 A. Yes, sir.

18 Q. Did anyone, in September, 2006, tell you that those Ariel

19 and Landsdow policies did not insure the hospital's risk?

03:10 20 A. No, sir.

21 Q. And was this during this time period when you said that you

22 would talk with Mr. Swetnam on the phone on a fairly regular

23 basis; is that right?

24 A. Yes, sir.

03:10 25 Q. Did he -- from September 2006 until the time that he

Costa Direct of Cook

03:10 1 stopped being the hospital's agent, did he ever mention to you
2 a problem with those offshore hurricane policies?
3 A. No, sir.

4 Q. Did Mr. Springfield ever bring this to your attention and
03:10 5 say, "Oh, Mr. Swetnam told me there's a problem with the
6 offshore policies"?
7 A. No.

8 Q. Anybody else at the hospital bring that to your attention?
9 A. No, sir.

03:10 10 Q. In this letter, what does Mr. Swetnam say; since there's a
11 problem with the offshores, that they're not in effect, what's
12 his proposal for insuring the hospital in case of a
13 catastrophic hurricane?
14 A. He offers the hospital a loss guaranty for the same amount
03:10 15 of money that the insurance policy was written for, which I
16 assume was \$75 million.

17 Q. Did Mr. Swetnam ever discuss during this time period, with
18 you, that he was going to personally guarantee the coverage?
19 A. No, sir.

03:11 20 Q. Anyone else at the hospital bring that to your attention
21 during 2006?
22 A. No, sir.

23 Q. What's your reaction to the proposal in this letter, that
24 Mr. Swetnam is going to insure the hospital?
03:11 25 A. That's no insurance at all.

Costa Direct of Cook

03:11 1 Q. Why do you say that?

2 A. Well, I don't think Mr. Swetnam could pay a \$75 million

3 claim.

4 Q. Would you have ever --

03:11 5 A. If we had the loss.

6 Q. Would you have ever agreed to Mr. Swetnam being the

7 personal insurer for the hospital's hurricane coverage?

8 A. I wouldn't.

9 Q. Now, I want to show you, Mr. Cook, what is in evidence as

03:11 10 Government's 17. And this is the -- the letter we just looked

11 at was supposedly September 7th. Did you see that, sir?

12 A. Yes.

13 Q. Exhibit 17, which I'm now showing you, is dated later that

14 month, September 25th, 2006. Do you see that?

03:12 15 A. Yes, sir.

16 Q. It's addressed to you. And if you look at the second page,

17 who is writing this letter?

18 A. Mr. Carter, Brent Carter.

19 Q. It says, "Dear Ward, Pursuant to your conversation with

03:12 20 David Smith today, please accept the attached binder with the

21 following information."

22 And then does it list a number of different

23 policies?

24 A. Yes, sir.

03:12 25 Q. Do you remember receiving this set of documents?

Costa Direct of Cook

03:12 1 A. I vaguely remember.

2 Q. Do you remember this set of documents being in your office?

3 A. Yes.

4 Q. How was it -- do you know what form it was in, in your

03:13 5 office?

6 A. Pardon?

7 Q. Do you remember what was -- when it was in your office, was

8 it just loose paper or what form was it in?

9 A. I kept separate folders on each policy, each type of

03:13 10 insurance. And I would imagine -- I would guess that I filed

11 each certificate in the property folder or liability folder or

12 whatever coverage it was.

13 Q. And I'm just going to show you one of the documents in

14 here, which is 117-04. Is it fair to say -- I'll just

03:13 15 represent there's 105 pages in this exhibit.

16 I want to look now at Page 4 in Government's 17.

17 Here it's talking about premiums, and it says "TWIA." What is

18 "TWIA"?

19 A. Texas Windstorm Insurance Association.

03:14 20 Q. And, then, later on, it's talking about captive reinsurers

21 with a premium of about \$900,000. Given the mention of TWIA

22 and the captive reinsurers at \$900,000, which policy is this

23 document referring to? What kind of coverage is the TWIA

24 referring to?

03:14 25 A. That's windstorm coverage. That's the State windstorm

Costa Direct of Cook

03:14

1 pool.

2 Q. Were there different layers of coverage that year?

3 A. Yes. The Texas Windstrom Pool insured, I believe,
4 \$3 million on every building that we had listed.

03:14

5 Q. And, then, were there higher layers, including the
6 offshore --

7 A. Everything else was above the windstorm pool.

8 Q. And when Mr. Carter -- it says here, "hand delivered." Do
9 you see that?

03:14

10 A. Yes, sir.

11 Q. "9-26-2006."

12 When Mr. Carter delivered this to you, did he say
13 anything about there being a problem with the offshore
14 windstorm coverage from the British Virgin Islands?

03:15

15 A. No, sir.

16 Q. That entire -- say, 2006, 2007, 2008, on those occasions
17 when he would stop by and say hello after visiting with others
18 at the hospital, did he ever say anything about problems with
19 the offshore windstorm coverage?

03:15

20 A. No, sir.

21 Q. I think you already mentioned, when you first joined the
22 hospital in 1989, a lot of what you were dealing with was
23 medical malpractice claims. Is that right?

24 A. That's about all I did.

03:15

25 Q. Is that a major part of a hospital's insurance program?

Costa Direct of Cook

03:16

1 A. Yes.

2 Q. In 2006 and 2007, do you recall the company with which the
3 hospital had an excess liability policy for medical
4 malpractice?

03:16

5 A. I believe it was Steadfast Insurance Company, which is
6 owned by Zurich.

7 Q. I'm going to show you what is in evidence as Government's
8 Exhibit 2A, Mr. Cook. And right there, where it says,

9 "Insurance Company," do you recognize that Steadfast Insurance
10 Company, what you just said?

03:16

11 A. Yes.

12 Q. And you said they're related to a company called Zurich?

13 A. Yes, sir.

14 Q. This says, "Interim Insurance Binder and Premium Billing."

03:16

15 What is an "interim" insurance binder?

16 A. It would be a proof of insurance to keep until the actual
17 policy was issued.

18 Q. And what is listed as the total premium for this policy?

19 A. Two point three million.

03:17

20 Q. And you see Mr. Swetnam signs it dated September 5th, '06?

21 A. Yes, sir.

22 Q. So, this was early September. That's the same time period
23 we just saw when we were talking about the offshore windstorm.
24 Is that right?

03:17

25 A. Yes, sir.

Costa Direct of Cook

03:17 1 Q. And there's a note here to the right, and what does that
2 say?
3 A. My initials.
4 Q. "WC"?
03:17 5 A. Yes, sir.
6 Q. And what's the date?
7 A. September 7, '06.
8 Q. Do you recall how you received this interim insurance
9 binder?
03:17 10 A. Well, I'm pretty sure it was in the mail.
11 Q. And what does the fact you received it -- you received it
12 two days after Mr. Swetnam signed it. Is that --
13 A. That's correct.
14 Q. -- what that notation indicates?
03:18 15 A. Right.
16 Q. When you would be sent this interim insurance binder, would
17 it be accompanied by another document from Swetnam Insurance?
18 A. Possibly an invoice.
19 Q. Now, I'm going to show you Government 3. Is this the
03:18 20 invoice you're talking about, the type -- what an invoice looks
21 like?
22 A. That's an invoice, but I can't see the amount on it there.
23 Q. Okay. I'll let it focus for a second.
24 A. Yes.
03:18 25 Q. Two point three million, is that for this --

Costa Direct of Cook

03:18 1 A. That's correct.

2 Q. -- interim binder we were just looking at?

3 A. Yes.

4 Q. Okay. And it's from Swetnam Insurance Services, correct?

03:18 5 A. Yes, sir.

6 Q. And it has the return address for Swetnam?

7 A. Yes, sir.

8 Q. And then it has the PO box for the healthcare system. Is

9 that a PO box at which the hospital would receive mail?

03:19 10 A. That's correct.

11 Q. And what would you do after getting that invoice?

12 A. I would have taken the invoice and written out a request

13 for payment and delivered the invoice and the request down to

14 our accounting department.

03:19 15 Q. And would you often ask in those written requests to have

16 the accounting department just give the check to you?

17 A. Yes.

18 Q. Did they always follow that instruction?

19 A. No, sir.

03:19 20 Q. What would they do instead?

21 A. Mail it to the payee.

22 Q. And I want to show you what's in evidence as Government 4A.

23 A check here, if you look, a date of September 18th, '06?

24 A. Yes, sir.

03:20 25 Q. Is that that same amount of 2.3 million plus we've seen?

Costa Direct of Cook

03:20 1 A. Correct.

2 Q. Made out to Swetnam Insurance Services?

3 A. Yes, sir.

4 Q. And do you remember anything that stands out about

03:20 5 Mr. Swetnam, how he got this check?

6 A. Well, we mailed this check -- the accounting department

7 mailed it to him.

8 Q. And did he have any reaction to the fact that the

9 accounting department mailed it to him?

03:20 10 A. Yes, sir. He asked me not to mail any more big checks, to

11 deliver them or call him and he would come pick them up.

12 Q. Did he give you any particular reason why?

13 A. No, sir.

14 Q. And is that what you tried to do moving forward after this

03:20 15 point?

16 A. Yes, sir.

17 Q. But you said, even then, sometimes accounting would still

18 mail the checks?

19 A. Sometimes they did.

03:21 20 Q. I want to move forward now to 2007. Did you -- again, did

21 the hospital obtain a hurricane policy from offshore?

22 A. Yes, sir.

23 Q. Do you recall Mr. Swetnam telling you anything about that

24 renewal?

03:21 25 A. He said it was going to cost less than the one the prior

Costa Direct of Cook

03:21 1 year.

2 Q. And was he -- did it, in fact, cost less that second year?

3 A. Yes, sir. I remember it was \$884,000.

4 Q. So, when he's discussing this renewal with you, had you

03:21 5 been told that there was a problem with the prior year's

6 offshore hurricane coverage policies?

7 A. No, sir.

8 Q. Would you have done an offshore policy again if Mr. Swetnam

9 had told you that that coverage in fact wasn't in existence?

03:21 10 A. No, sir.

11 Q. Did you go to Mexico the second year?

12 A. No, sir.

13 Q. Did he mention anything about the Mexico issue, about

14 having to conduct it outside the country?

03:22 15 A. Prior to the effective date of that policy, I asked Mike if

16 we had to go to Mexico again to make this deal; and he said,

17 "No. It's not necessary this year."

18 Q. I want to go back to Government 13. Showing you the second

19 page in Government 13, Mr. Cook, is that again Swetnam

03:23 20 Insurance Services' letterhead?

21 A. Yes, it is.

22 Q. Dated or March 10th, 2008, addressed to James Springfield.

23 And what does it say this letter is regarding?

24 A. Regarding 2007 into '8 RAC RE hurricane policy.

03:23 25 Q. Is that -- in your recollection, is that the name of the

Costa Direct of Cook

03:23 1 policy that second year the hospital went with the offshore
2 hurricane coverage?

3 A. Yes, sir.

4 Q. We met yesterday to talk about this case, correct?

03:23 5 A. Yes, sir.

6 Q. And I showed you this document --

7 A. Yes, sir.

8 Q. -- yesterday?

9 Before I showed this to you yesterday, had you
03:23 10 ever seen this document before?

11 A. No, sir.

12 Q. Do you have any recollection of it being in your files at
13 the hospital?

14 A. No. I've never seen it.

03:24 15 Q. And again, looking down here, you see Mr. Swetnam's name
16 but no signature. Is that correct?

17 A. That's correct.

18 Q. And in this one he's saying, "We recently found out that
19 RAC RE BVI SPC, Ltd., which was supposed to be set up and
03:24 20 authorized to do business, is still not licensed by the BVI
21 insurance department due to various pending items that have not
22 been provided."

23 Q. Did Mr. Swetnam ever tell you that during 2007 or 2008?

24 A. No, sir.

03:24 25 Q. Did Mr. Carter ever tell you that?

Costa Direct of Cook

03:24

1 A. No, sir.

2 Q. Mr. Smith or Mr. Reagan?

3 A. No, sir.

4 Q. Did Mr. Springfield bring this to your attention back in
5 '08?

6 A. No, sir.

7 Q. Did anyone at the hospital inform you in '08 that they had
8 heard from Mr. Swetnam or anyone else that there was an issue
9 with this hurricane policy?

03:25

10 A. No.

11 Q. And here, in the second paragraph, it says, "While this was
12 not good news, it will not affect the insurance coverage
13 afforded to Valley Baptist, because the RAC RE insurance
14 coverage was 100 percent reinsured by Landmark American
15 Insurance Company."

03:25

16 Is it your understanding that the Landmark policy
17 was going to already provide the same coverage as the offshore
18 supposed RAC RE policy?

19 A. I can't remember that.

03:25

20 Q. Would the hospital have paid over \$800,000 for an offshore
21 hurricane policy if a policy the hospital already had was going
22 to provide the same coverage?

23 A. No, sir.

24 Q. And since I just showed you this yesterday, I take it you
25 haven't had a chance to go back and look at the Landmark policy

03:25

Costa Direct of Cook

03:26 1 or talk to anyone from Landmark, to remember what the specifics
2 of their policy was at that time. Is that fair?
3 A. Yes, sir.
4 Q. And did the hospital also renew the Zurich policy for the
03:26 5 2007-2008 time period, when Mr. Swetnam, Mr. Carter, Mr. Smith
6 and Reagan were still the agents?
7 A. Yes, sir.
8 Q. I want to show you Government 4. Do you recognize this
9 document, Mr. Cook?
03:26 10 A. It's a declarations page from an excess umbrella policy.
11 Q. And does it list "Steadfast" right there?
12 A. Yes, sir.
13 Q. And, then, also "Zurich" up in the top right?
14 A. Yes.
03:27 15 Q. And we've already seen that interim insurance binder which
16 you get initially. Do you then, eventually, get the Zurich
17 policy itself?
18 A. Yes.
19 Q. And what is the declarations page?
03:27 20 A. Now, this is the '06-'07 policy.
21 Q. Right, right. Fair enough. September '06 to September
22 '07?
23 A. That's right.
24 Q. I'm just showing this as an example, though. You're right.
03:27 25 I'm just showing this as an example of the Zurich document.

Costa Direct of Cook

03:27 1 What is this declaration page?

2 A. It's the first page of a policy. It shows the policy

3 limits, policy number, policy period and, I think, the premium.

4 Maybe it's -- the premium may be down there.

03:27 5 Q. Sure. If you go down there --

6 A. Yes, sir.

7 Q. -- is there the premium?

8 A. There it is.

9 Q. And it has the signature of an authorized representative

03:27 10 there?

11 A. Yes, sir.

12 Q. Do you see that?

13 A. Yes.

14 Q. Is that Michael Swetnam's name listed there?

03:28 15 A. No.

16 Q. Is that, in your understanding, a representative of

17 Zurich's signature?

18 A. That's the way it's supposed to be. I don't recognize the

19 signature.

03:28 20 Q. With regard to these Zurich policies, did Mr. Swetnam ever

21 discuss what he had to do to go and negotiate the policy?

22 A. To go and negotiate, he -- he would go to New York, and he

23 told me that he negotiated with several different insurance

24 companies to obtain the best deal we could get on purchasing

03:28 25 this excess liability coverage.

Costa Direct of Cook

03:28 1 Q. And when he told you that the policy he was giving you was
2 the best deal, did you trust Mr. Swetnam?

3 A. Yes, sir.

4 Q. When you were --

03:28 5 THE COURT: Excuse me.

6 Was there ever any discussion between the health
7 facility and anybody at Smith-Reagan about the size of their
8 premiums? Or was that something you simply didn't inquire
9 about?

03:29 10 THE WITNESS: I can't remember any conversations.
11 We -- we trusted these guys to give us the best deal that we
12 could get. We paid a total of seven or eight million dollars a
13 year in insurance, for all of it, for the whole program.

14 BY MR. COSTA:

03:29 15 Q. And along the line of that question, I think you mentioned
16 earlier that some consultants came in around 2005. Is that
17 correct?

18 A. I can't remember the exact year. The first consultants
19 came in around '05-'06.

03:29 20 Q. And do you remember if those consultants had a view about
21 the hospital's insurance program?

22 A. Yes, sir.

23 Q. What was their view about the cost of it?

24 A. I don't remember the -- what their estimate of the cost

03:30 25 was. Their -- they just -- basically, the report they said --

Costa Direct of Cook

03:30 1 they sent us was that they could have provided better coverage
2 and perhaps at a better cost. I don't remember any specific
3 amounts.

4 Q. Did you have any discussions with Mr. Swetnam in which he
03:30 5 had a reaction to these consultants who came in and reviewed
6 the insurance program?

7 A. Yes, sir.

8 Q. What was his opinion about that?

9 A. Well, he wasn't very happy about it.

03:30 10 Q. Did he say that -- did he defend the program he had helped
11 institute?

12 A. I believe Mr. Swetnam wrote a rebuttal report about the
13 consultant report.

14 Q. Going back to Government 4, is there any indication on this
03:31 15 document that this premium amount was changed from when Zurich
16 issued this document by Mr. Swetnam?

17 A. Would you repeat that, please?

18 Q. Sure. Is there any indication on this document -- let me
19 ask you this.

03:31 20 Does Mr. Swetnam's name appear on this document?

21 A. I don't see it.

22 Q. Is there anything on this document that indicates to you
23 that after Zurich issued this declarations page that
24 Mr. Swetnam changed these premium numbers? Is there
03:31 25 anything -- just from looking at that, would you think that

Costa Direct of Cook

03:31 1 that had happened?

2 A. No, sir.

3 Q. Did Mr. Swetnam ever tell you that he was going to alter or

4 that he did alter the premium amount on this policy?

03:31 5 A. No, sir.

6 Q. Did he ever tell you that he was a managing general agent

7 for Zurich and could set the premiums he wanted, given that

8 role?

9 A. No, sir.

03:31 10 Q. And he told you, in fact, he had to go to New York to

11 negotiate that. Is that right?

12 A. Well, he did almost every year. I can't remember if he did

13 on this specific one, but --

14 Q. Fair enough. But, generally, he told you that he often --

03:32 15 a lot of years, he had to go to New York --

16 A. Yes, sir.

17 Q. -- to negotiate?

18 Did you ever sign documents on Mr. Swetnam's

19 behalf?

03:32 20 A. Yes, sir.

21 Q. What types of documents were they?

22 A. We set up a self-insurance program for physicians, employed

23 physicians. And we -- any time we added a physician or deleted

24 a physician, we would have to sign an endorsement. And

03:33 25 Swetnam -- from the inception of that program, Swetnam signed

Costa Direct of Cook

03:33 1 it, the endorsements.

2 And then, after awhile, it became cumbersome
3 to -- as more and more doctors checked in that had to mail
4 those endorsements down to Mike to sign and mail back -- we
03:33 5 kept losing track of them. And, so, I asked him if I could
6 just sign his name to those endorsements and save the hassle;
7 and he said, "Yeah, just sign my name."

8 Q. So, you had a discussion with him about whether it would be
9 okay to sign his name?

03:33 10 A. Yes.

11 Q. And what would you do after signing his name? Would he
12 ever see what you had signed?

13 A. Oh, he required that I mail him a copy of it.

14 Q. That was his request?

03:33 15 A. I always mailed him a copy of it.

16 Q. And at some point did you want to put this in writing, the
17 fact that he had told you it was okay to sign his name?

18 A. Yes, sir.

19 Q. I want to show you what is in evidence as Government's 19.

03:34 20 Do you recognize this, Mr. Cook?

21 A. Yes, sir.

22 Q. Is this the -- when you put it in writing, the fact that
23 Mr. Swetnam was fine with you signing his name to expedite this
24 process?

03:34 25 A. Yes, sir.

Costa Direct of Cook

03:34 1 Q. Who typed this out?
2 A. I did.
3 Q. And then did you present it to Mr. Swetnam?
4 A. Yes.

03:34 5 Q. And did he say, "Oh, forget about it. We don't need to
6 formalize this in writing"?
7 A. No. He signed it. He wrote a note on there that the
8 certificates must be mailed to Mike Swetnam within three
9 business days.

03:34 10 Q. So, that ink is Mr. Swetnam's additions?
11 A. Yes.

12 Q. He wanted to know within three days -- to have copies of
13 what you are signing?
14 A. When I issued an endorsement.

03:34 15 Q. Then he signed this, correct?
16 A. That's right.

17 Q. Do you know what that date is?
18 A. Yes.

19 Q. What is it?
03:35 20 A. August 29th, '06.

21 Q. That date ring a bell for any other reason?
22 A. Yes, sir.

23 Q. Why is that? What is the other reason?
24 A. That was the night that we drove to Mexico for dinner.

03:35 25 Q. The same -- was it the same evening that you gave him this

Costa Direct of Cook

03:35 1 and had him sign it?

2 A. Yes, sir. It was just coincidental that I thought to do
3 this that particular day. But I did it and -- we left for --
4 we left the hospital for dinner and I just brought it out and
03:35 5 handed it to him and he read it and signed it.

6 Q. And did he say -- and that was the same night he gave you
7 those three cover notes?

8 A. Yes, sir.

9 Q. Did he say, "Wow, that's a coincidence. I actually signed
03:35 10 for Mr. Thompson on two of those cover notes"?

11 A. No, sir.

12 Q. Did you ever have a discussion with Mr. Swetnam about the
13 commissions that he and the other agents were receiving off the
14 hospital program?

03:35 15 A. One time I talked to Mike about -- he told me that he
16 was -- expressed the fact that he was upset that
17 Mr. Springfield and/or Mr. Vela asked him to show them how much
18 commission he was making off Valley Baptist's insurance
19 program.

03:36 20 Q. And what was his reaction to that request from the hospital
21 executives?

22 A. He was unhappy. He said that it wasn't any of their
23 business.

24 Q. And did you have a response?

03:36 25 A. Yes, sir. I said, "Well, Mike, it's -- it's between 10 and

Costa Direct of Cook

03:36

1 15 percent, isn't it?"

2 And he said, "The average is under 15 percent."

3 Q. Do you recall the approximate time period -- just a rough
4 guess as to -- your best guess as to when that discussion took
5 place?

03:37

6 A. I really can't remember.

7 Q. But you said the impetus for him mentioning it was that
8 Mr. Springfield and Mr. Vela had been asking him about it?

9 A. Yes, sir.

03:37

10 Q. I'm going to go back to Government 4, which shows -- it's
11 that Zurich policy showing a total premium of 2.3 million. And
12 you said that you had no indication that Mr. -- that anyone had
13 altered this after it left Zurich, to increase the premium.

14 If you had known that the premium Zurich was
15 charging was approximately a million dollars less, what would
16 the hospital have done with that information?

03:37

17 A. Well, we wouldn't have paid 2.3 for a policy that actually
18 the insurance company was going to charge 1.3 or whatever.

19 Q. And when you were asking Mr. Swetnam about his commissions,
20 did he indicate that the agents were receiving about a million
21 dollars off the Zurich policy?

03:38

22 A. No, sir.

23 Q. And on those offshore hurricane policies, if you had been
24 told like that letter purports to tell the hospital back in '06
25 and then in early '08 that, in fact, these policies were not in

03:38

Cyganiewicz Cross of Cook

03:38

1 existence, what would the hospital have done?

2 A. Wouldn't have purchased it.

3 Q. And if you found out after the fact and you had already
4 paid the 936 --

03:38

5 A. Well, I would have asked for a refund.

6 Q. Did you think that some of that premium, \$936,000, was
7 going to the insurance company to provide coverage?

8 A. Yes, sir.

9 MR. COSTA: Pass the witness, your Honor.

03:38

10 THE COURT: All right. Do you wish to inquire?

11 Yes, sir.

12 **CROSS-EXAMINATION**

13 BY MR. CYGANIEWICZ:

14 Q. Good afternoon, Mr. Cook.

03:39

15 A. Hi.

16 Q. How are you?

17 A. Great.

18 Q. Enjoying the retirement?

19 A. Well, I'm not doing great.

03:39

20 Q. I don't think any of us are doing great. But are you
21 enjoying the retirement?

22 A. Yes, sir.

23 Q. Do you know me, Mr. Cook?

24 A. Well, I know you from seeing your face on television as the
03:39 25 mayor down there at Port Isabel, I believe.

Cyganiewicz Cross of Cook

03:39 1 Q. Well, what I really meant, we haven't met before except for
2 this afternoon, correct?

3 A. No, we've never met.

4 Q. Well, I'm going to try to be as brief as possible and just
03:39 5 go over a few things that we think are important.

6 I represent Mr. Carter. You understand that,
7 correct?

8 A. Yes, sir.

9 Q. Let me first -- what did you review in preparation for your
03:39 10 testimony this afternoon?

11 A. We reviewed all the documents that had been presented to me
12 by our -- the government attorney.

13 Q. Did you --

14 A. And I read -- I read a deposition I gave a year and a half,
03:40 15 two years ago and -- that's about it.

16 Q. Now, that was my point. I have your deposition. So, if
17 I'm asking questions, I'm not trying to trick you. I just want
18 to make sure what you said back then is the same way you feel
19 now.

03:40 20 Did you notice any changes that come to mind
21 immediately or anything like that in your deposition?

22 A. Not any major changes, I don't --

23 Q. Did you -- I'm assuming you met with the prosecutors a
24 couple of times and -- to review the --

03:40 25 A. Yes.

Cyganiewicz Cross of Cook

03:40 1 Q. Okay. You met with them, I think Mr. Costa said yesterday?

2 A. Yes, sir.

3 Q. And previously to that, also?

4 A. About a week ago, made a dry run up here a week ago.

03:40 5 Q. And those are the two meetings you've had with the

6 prosecutors?

7 A. Yes.

8 Q. No others?

9 A. (No response).

03:40 10 Q. Is that correct? No others?

11 A. That's correct.

12 Q. I know Mr. Costa went through your background. You started

13 as a claims man for the hospital in '89, correct?

14 A. Yes, sir.

03:40 15 Q. And then moved up to vice-president of, I would say, risk

16 management. Is that correct?

17 A. Yes.

18 Q. In '97?

19 A. Yes, sir.

03:41 20 Q. Okay. And when you were a -- in the private insurance

21 business, what type of licenses did you have?

22 A. I had a Texas all lines insurance adjuster's license.

23 Q. Did you ever have I guess what they call a surplus lines

24 license?

03:41 25 A. No, sir.

Cyganiewicz Cross of Cook

03:41 1 Q. This general or managing general agent license?

2 A. No, sir.

3 Q. Are you aware of what type of licenses Mr. Swetnam has?

4 A. No, sir.

03:41 5 Q. Mr. Carter?

6 A. No, sir.

7 Q. Would you agree with me that Mr. Carter is less experienced

8 in the insurance industry than Mr. Swetnam?

9 A. Yes, sir.

03:41 10 Q. Regarding the Valley Baptist -- that's a pretty big

11 operation, is it not?

12 A. Yes, sir.

13 Q. Do you know the amount of employees?

14 A. I'm going to guess around 2500.

03:41 15 Q. The amount of doctors?

16 A. Probably 300.

17 Q. And as risk management, are you familiar with, like, the

18 value of their assets and -- and their properties?

19 A. Their properties?

03:42 20 Q. Yes.

21 A. Yes, sir.

22 Q. Do you know how much that would be?

23 A. Well, we insured the value; and we had over 500 million in

24 property.

03:42 25 Q. And do you know how much generally the hospital would pay

Cyganiewicz Cross of Cook

03:42 1 in insurance premiums in just a typical year?

2 A. For all --

3 Q. Yes, sir.

4 A. -- coverages?

03:42 5 Q. Yes, sir.

6 A. I think probably eight or nine million dollars.

7 Q. Do you know how many policies generally existed?

8 A. Maybe 15 or 20 maybe.

9 Q. Can you briefly just outline some of the major ones -- we

03:42 10 may have heard this previously from another witness -- the

11 different types?

12 A. Oh, well, we had malpractice excess liability insurance

13 that sat -- that coverage sat above our self-insurance trust.

14 We had, like, a \$5 million deductible per claim on the med-mal.

03:43 15 Then we had many different property policies

16 through various insurance companies. We had workers comp; we

17 had bonds; we had just -- just -- I just can't think off --

18 Q. Automobiles?

19 A. Automobile, yes, sir.

03:43 20 Q. I think somebody mentioned a helicopter. Some sort of

21 policy for a helipad?

22 A. Helipad, aircraft.

23 Q. And you oversaw that whole insurance business for the

24 hospital?

03:43 25 A. Yes. Yes, sir.

Cyganiewicz Cross of Cook

03:43

1 Q. I know there's been discussion about the hospital being
2 non-profit; but there's parts of the hospital in that system
3 that makes a lot of money, does it not?

4 A. I suppose so.

03:43

5 Q. It's the same operation owns the golf course?

6 A. (No response).

7 Q. Do you know if they still own the golf course?

8 A. I believe the System does, yes.

9 Q. And how long did you retire, how long ago?

03:44

10 A. Just October of '09.

11 Q. And is there someone who has taken your place?

12 A. No.

13 Q. One of the -- I think something you may have mentioned was
14 the excessive loss program. Are you familiar with that

03:44

15 program?

16 A. Yes.

17 Q. I think in your deposition you said you administered it and
18 paid some claims but you weren't there when it started. Is
19 that correct?

03:44

20 A. No. I was there when it started.

21 Q. You were. Okay.

22 Tell us about -- just briefly how that program
23 works.

24 A. That was back in the early 1990's, and physicians were
25 having a very difficult time purchasing insurance. The

03:44

Cyganiewicz Cross of Cook

03:44 1 insurance med-mal companies were charging so much. And the
2 hospital bylaws required each physician to provide \$500,000
3 limit of med-mal. The physicians were hurting. They couldn't
4 buy it.

03:45 5 It -- so, we set up a self-insurance program,
6 called the excessive loss, to provide each physician with
7 \$300,000 limit excess their primary 200 million. So, they no
8 longer had to purchase 500. All they had to do was purchase
9 200 million, and our XOL program provided the next \$300,000
03:45 10 layer to satisfy the bylaws.

11 Q. And, of course, that would have to be patients that were
12 treated at the Valley Baptist System, correct?

13 A. I think so.

14 Q. And were you ever -- did you ever become aware of an
03:45 15 attorney's opinion saying it may not be in compliance with
16 federal law and could be illegal?

17 A. No, sir.

18 Q. You still -- at this point in time have you heard about
19 that at all?

03:46 20 A. I may have in connection with this case, but I'm not aware
21 of any opinions.

22 Q. Is that program still in existence?

23 A. No, sir.

24 Q. If that lawyer's opinion was correct -- and I'm not trying
03:46 25 to blame you for anything -- but the hospital would basically

Cyganiewicz Cross of Cook

03:46 1 be doing something illegal without even knowing about it.

2 Would that be a fair statement?

3 A. Could be.

4 Q. Now, let me go to the area of how -- how does the hospital
03:46 5 decide on who they buy insurance from? Who makes those type
6 decisions at the hospital?

7 A. Well, we -- we were purchasing insurance from Smith-Reagan
8 agency when I went to work for the hospital. And nobody ever
9 suggested that we should change; so, we just kept renewing it
03:46 10 through the same agency.

11 Q. And that's a good point -- time to ask about Smith and
12 Reagan. They've been around there for a long, long time?

13 A. Yes.

14 Q. They were always looked upon as being trustworthy and
03:47 15 reliable?

16 A. Yes.

17 Q. They've been described in this courtroom as "pillars of the
18 community." Would you agree with all that?

19 A. Yes, sir, I would.

03:47 20 Q. They were there when you started in the hospital in 1989,
21 correct?

22 A. Yes, sir.

23 Q. And to this day -- or up until recently, they were still
24 the agency, correct?

03:47 25 A. Yes. Yes, sir.

Cyganiewicz Cross of Cook

03:47

1 Q. Would you ever get involved in selecting or going over
2 proposals for insurance to purchase --

3 A. Yes, sir.

4 Q. -- for the hospital?

03:47

5 A. Yes, sir.

6 Q. And who would you meet with about that?

7 A. I would meet with Mr. Vela and occasionally

8 Mr. Springfield; but usually those discussions, when we

9 discussed proposals, included Mr. Swetnam and/or Mr. Carter

03:47

10 and/or Mr. Smith.

11 Q. And did Mr. Vela or anybody at the hospital ever tell you
12 that they're way out of the market in their pricing?

13 A. No, sir.

14 Q. You wouldn't have paid it if you thought that was true?

03:48

15 A. Absolutely true.

16 Q. Would they be in the policy of getting quotes and proposals
17 back then? Or at some point during your tenure?

18 A. Well, we were talking earlier today about bringing in a
19 consultant a couple of times. I think that's what they were
20 for.

03:48

21 Q. And you would discuss the renewal programs with Manny and
22 some of the other people at the hospital?

23 A. Yes, sir.

24 Q. But, basically, it wasn't your decision on who to hire?

03:48

25 A. No, sir.

Cyganiewicz Cross of Cook

03:48 1 Q. Do you know or are you aware -- because you've been in the
2 industry for a long time now --
3 A. Uh-huh.
4 Q. -- of any caps on commissions that legally cannot be
03:48 5 charged?
6 A. I'm not familiar with the insurance laws.
7 Q. You don't have any information that shows 10 percent is the
8 most you can ever charge for one particular policy?
9 A. No, I don't know.
03:48 10 Q. You had your own licenses still, insurance licenses, at
11 this point?
12 A. My adjuster's license?
13 Q. Yeah, or any type of insurance related licenses.
14 A. No, sir. That's just the -- only that one.
03:49 15 Q. You're familiar with the surplus line insurance?
16 A. I don't really know a definition for it.
17 Q. I'll just pass on that, then.
18 A. Okay.
19 Q. How about your relationship with Smith and Reagan? I guess
03:49 20 my point is I think in your deposition you said that your
21 primary contact, your number one contact was Mr. Swetnam. Was
22 that correct?
23 A. That's right.
24 Q. And I think you said on -- sometimes Mr. Smith would be
03:49 25 involved. Is that correct?

Cyganiewicz Cross of Cook

03:49

1 A. Yes, sir.

2 Q. And I think with Mr. Carter you used the word on -- "very
3 rarely or occasionally I would see Mr. Carter"?

4 A. Yes.

03:49

5 Q. Okay. Is that true?

6 A. Yes, sir. I saw Mr. Carter quite a -- quite often, but we
7 didn't ever have any in-depth insurance discussions. Most of
8 my technical discussions were with Mr. Swetnam.

9 THE COURT: When you saw him, that was at the
10 hospital?

03:49

11 THE WITNESS: Yes, sir.

12 THE COURT: You didn't have a social relationship with
13 him?

14 THE WITNESS: None.

03:50

15 BY MR. CYGANIEWICZ:

16 Q. I think it was you or someone said that he would stick his
17 head in and say hello. Was that pretty much how that
18 relationship was?

19 A. Exactly.

03:50

20 Q. Mr. Swetnam was your number one contact with that agency?

21 A. Yes, sir.

22 Q. Mr. Carter, did he ever negotiate premiums with you or
23 discuss --

24 A. No, sir.

03:50

25 Q. But he would be -- I guess for lack of -- the delivery man?

Cyganiewicz Cross of Cook

03:50 1 On some of these papers, would he hand deliver you that binder?

2 A. Yeah, some.

3 Q. Okay. And when I say "binder," we're talking about a

4 three-ring booklet, correct?

03:50 5 A. Yes, sir.

6 Q. Because a binder has also been used in this one page, which

7 is like a commitment for insurance?

8 A. That's right. Two different things.

9 Q. So, Brent would hand you a package, basically,

03:50 10 occasionally?

11 A. Occasionally.

12 Q. Was that rare?

13 A. Not rare. We had a lot of correspondence going back and

14 forth; and he just delivered things, endorsements and that kind

03:50 15 of thing, invoices --

16 Q. He was a delivery man?

17 A. Occasionally, yeah, and -- from time to time.

18 Q. But never negotiated premiums or talked in detail with you

19 about the policies or so forth?

03:51 20 A. Never.

21 Q. You knew Mr. Swetnam, I think you said, back from 1985. Is

22 that correct?

23 A. Something like that.

24 Q. He worked with you at Trinity?

03:51 25 A. No.

Cyganiewicz Cross of Cook

03:51 1 Q. No. He would file claims with you through Trinity or
2 something like that?
3 A. Yes.
4 Q. Okay. And is he the one who suggested that -- to the
03:51 5 hospital that they hire you?
6 A. Yes.
7 Q. And when did you first meet Mr. Carter?
8 A. I think about 19 -- about 2005, I believe.
9 Q. You never knew him before that time?
03:51 10 A. No, sir.
11 Q. Do you know what his position was at Smith and Reagan?
12 A. No, sir.
13 Q. He wasn't an owner, was he?
14 A. I don't know.
03:52 15 Q. Are you familiar at all with the current insurance
16 situation at the hospital?
17 A. Today?
18 Q. Yes.
19 A. No, sir.
03:52 20 Q. Are you familiar with Lorraine Lewis?
21 A. Oh, yes.
22 Q. Is she -- what company is she with?
23 A. Alliant.
24 Q. Would it be fair to say -- I think you may have agreed with
03:52 25 this in the depo -- that she's the one who actually brought

Cyganiewicz Cross of Cook

03:52 1 forth these allegations that led to the lawsuit? Is that true
2 or not?
3 A. I believe she discovered some discrepancies.
4 Q. And at the time, she was a consultant?
03:52 5 A. She was their agent.
6 Q. Okay. So, she was first hired as a consultant; but ended
7 up getting the hospital business. Is that correct?
8 A. That's correct.
9 Q. And does she still have that business?
03:52 10 A. As far as I know.
11 Q. Do you know how much, in millions of dollars, that she is
12 making?
13 A. I can't recall.
14 Q. Were you ever told that she was sued for falsely accusing
03:52 15 someone of a crime?
16 A. That she was?
17 Q. Yeah.
18 A. No.
19 Q. She never told you that?
03:53 20 A. No.
21 Q. And you don't know how much money she's making, what type
22 of contract she has with the hospital currently?
23 A. No, I don't.
24 THE COURT: He said he doesn't know.
03:53 25 BY MR. CYGANIEWICZ:

Cyganiewicz Cross of Cook

03:53 1 Q. Do you know the status of any claim from Hurricane Dolly
2 and what's going on with that claim at the hospital now?
3 A. Damage to the hospital?
4 Q. Yeah. Did they file a claim for damage from Hurricane
03:53 5 Dolly's?
6 A. Yes, sir, they did.
7 Q. Okay. Is that still pending?
8 A. I don't know.
9 Q. You don't know much about that claim at all?
03:53 10 A. I don't know. I think it was -- I think it ran 25 or 30
11 million dollars, but I'm just -- I can't give you an exact --
12 Q. We heard a figure discussed in court about it was a seven
13 million-dollar deductible. Is that --
14 A. Yeah, I think that's correct.
03:53 15 Q. Do you know how much money she's made on that policy?
16 A. No, I don't.
17 Q. Do you know if there's any type of litigation involved now
18 on that policy?
19 A. No, I don't.
03:53 20 Q. Or that claim?
21 A. I don't know.
22 Q. Your duties, then, with risk management -- I'm not trying
23 to simplify it, because, you know, you know a lot about
24 insurance. You're still handling claims. But you would
03:54 25 basically approve invoices and pay checks?

Cyganiewicz Cross of Cook

03:54 1 A. That's about it.

2 Q. You reviewed the checks that were involved in this case,

3 that I think Mr. Costa discussed with you?

4 A. Yeah, the ones that he showed me.

03:54 5 Q. And those checks involve four different policies: two

6 Zurich, two what I'll say windstorm policies?

7 A. Yes, sir, I think.

8 Q. Did Mr. Carter ever mail you an invoice?

9 A. (No response).

03:54 10 Q. I'm not talking about Swetnam or Swetnam Insurance. I'm

11 talking about Mr. Brent Carter. Did he ever send any invoices

12 to you?

13 A. I never received any invoices with his name on them.

14 Q. Okay. That's my question. Did you ever send him any

03:54 15 checks with his name on them?

16 A. No, sir.

17 Q. Who sent the invoices to you regarding these four policies?

18 A. Swetnam.

19 Q. Who did you send the checks to?

03:55 20 A. Swetnam.

21 Q. Do you have any idea what happened to those checks --

22 A. No, sir.

23 Q. -- afterwards?

24 Did Mr. Carter ever make you issue a check from

03:55 25 Valley Baptist?

Cyganiewicz Cross of Cook

03:55 1 A. No, sir.

2 Q. Did he ever cause you to issue a check from Valley Baptist?

3 A. No, sir.

4 Q. The next brief area is just the Mexico meeting. You know

03:55 5 now that there's nothing unusual about going to Mexico on a --

6 to talk about a non-admitted captive situation?

7 A. Well, I thought it sounded a little strange back at the

8 time.

9 Q. Right.

03:55 10 A. But I asked Mr. Swetnam if it was kosher, if it was legal

11 to do that; and he said it was. So --

12 THE COURT: I guess the question is do you have a

13 different understanding now. Do you have -- I mean, do you

14 have a different understanding about --

03:55 15 THE WITNESS: No. Same understanding.

16 THE COURT: Okay. All right.

17 BY MR. CYGANIEWICZ:

18 Q. Who contacted you to set up that meeting?

19 A. Mike.

03:56 20 Q. And was that through a phone call?

21 A. Yes.

22 Q. Did Mr. Carter ever call you about the meeting in Mexico?

23 A. No, sir.

24 Q. And when you went to Mexico, who handed you the papers?

03:56 25 A. Mike.

Cyganiewicz Cross of Cook

03:56 1 Q. Did Mr. Carter handed you anything?

2 A. No, sir.

3 Q. Did he discuss anything with you about insurance?

4 A. No, sir.

03:56 5 Q. As a matter of fact, I think you've basically said that it

6 was more of a social dinner than --

7 A. That's all it was.

8 Q. There was no discussion about insurance?

9 A. None.

03:56 10 Q. Definitely not from Mr. Carter?

11 A. No, sir.

12 THE COURT: If you could wind up your questions. If

13 not, on this specific subject -- I mean, if not on the whole --

14 on the witness in its entirety, then on this subject.

03:56 15 You-all still need to go at 4:00?

16 THE JURORS: (Indicating).

17 THE COURT: Yeah.

18 MR. CYGANIEWICZ: I can try to get done in five

19 minutes, your Honor.

03:56 20 THE COURT: Okay. Let's just --

21 MR. CYGANIEWICZ: Let me --

22 BY MR. CYGANIEWICZ:

23 Q. Do you know who prepared those documents that were handed

24 to you in Mexico?

03:56 25 A. I don't know.

Cyganiewicz Cross of Cook

03:57 1 Q. Was it true that Mr. Smith was supposed to attend that
2 meeting in Mexico?
3 A. I don't --
4 Q. You didn't know anything about that?
03:57 5 A. I don't know.
6 Q. Did you ever talk to Mr. Smith about the meeting in Mexico?
7 A. I don't remember ever talking to him.
8 Q. Did -- when you left that meeting, did you talk to
9 Mr. Smith about that particular policy on windstorm?
03:57 10 A. I don't think so.
11 Q. So, there was no major discussion about insurance at that
12 entire meeting?
13 A. None.
14 Q. And, of course, you talked about the civil suit and you
03:57 15 were deposed, correct?
16 A. Yes, sir.
17 Q. Smith and Reagan were not sued?
18 A. No.
19 Q. So, in conclusion, Mr. Cook, let me ask you, Mr. Carter
03:57 20 never mailed you anything and you never mailed anything to him,
21 correct?
22 THE COURT: I think he's testified to that.
23 A. No, sir.
24 THE COURT: He's testified that he has not.
03:58 25 BY MR. CYGANIEWICZ:

Cyganiewicz Cross of Cook

03:58 1 Q. Did you ever wire any money to Mr. Clark or back and forth?

2 A. No, sir.

3 THE COURT: "Mr. Clark"?

4 MR. CYGANIEWICZ: I'm sorry. Mr. Carter.

03:58 5 A. I didn't, to Clark nor Carter.

6 MR. CYGANIEWICZ: I just feel like I'm being rushed,

7 your Honor. I'm sorry.

8 BY MR. CYGANIEWICZ:

9 Q. Do you know of -- do you have any evidence that Mr. Carter

03:58 10 changed any premium amounts?

11 A. No, sir.

12 Q. Altered any documents?

13 A. No, sir.

14 Q. Signed somebody's name?

03:58 15 A. No, sir.

16 Q. Do you know if he even knew that the hurricane policies

17 were not in effect?

18 A. No, sir.

19 MR. CYGANIEWICZ: That's all I have, your Honor.

03:58 20 THE COURT: Okay. I really hate to keep this witness

21 over another day, but I don't think I have a choice.

22 MR. CLARK: I can make it surgical and see where we're

23 at.

24 THE COURT: Well, there will probably be redirect.

03:58 25 I'm committed to these good people to turn them loose at 4:00.

03:58

1 MR. CLARK: Sorry, Judge.

2 THE COURT: I want to keep faith with all of you.
3 You've done so much for us. I hope you planned your lunch, and
4 I hope you're finding each other good company.

03:59

5 We know this is hard, but this -- jury duty is
6 classically, classically an instance of short-term pain for
7 long-term gain. It really is.

8 With our thanks, could everyone please rise?

9 *(Jury not present)*

03:59

10 THE COURT: You may step down, sir.

11 We need to talk briefly about our timetable. I'm
12 getting increasingly apprehensive about our ability to finish
13 by Friday.

14 How many more witnesses do you have?

04:00

15 MR. COSTA: Mr. Cook, depending on Mr. Clark's cross,
16 will be done -- you know, Mr. Clark's cross in the morning --
17 and then we have two more witnesses, who should not be long.
18 We have someone from Landmark Insurance, who is going to be
19 very quick and say that that policy didn't re-insure the --

04:00

20 THE COURT: Yeah, yeah.

21 MR. COSTA: And then we have the individual from
22 Zurich. He might be a little bit longer, but I don't think --
23 I'm hopeful we can --

24 THE COURT: Then you'll rest?

04:00

25 MR. COSTA: -- finish around lunch.

04:00

1 THE COURT: Then you'll rest?

2 MR. McCONNELL: Then we'll rest, your Honor.

3 THE COURT: I know I can't hold you to this. You
4 don't know if you're going to call your own clients or not.

04:00

5 But do you have any idea, other than your own clients, how much
6 testimony you're going to put on?

7 MR. CHANEY: Other than Mr. Carter, we have the
8 possibility of one expert. I can't imagine he would be more
9 than an hour or two for everyone.

04:01

10 And, then, we've listed Mr. Hanslik; but we're
11 not sure if we're going to call him at this point in time, your
12 Honor. So, our total time, I'm going to say, is a half day.

13 THE COURT: Oh, really? Okay. Well --

14 MR. CLARK: I think that sounds about right. We've
15 got under subpoena Mr. Springfield, Mr. Eastham and
16 Mr. Lieberenz.

04:01

17 THE COURT: Who is the last one?

18 MR. CLARK: The last one is another officer at the
19 hospital.

04:01

20 THE COURT: Oh, okay.

21 MR. CLARK: I don't believe we would call all three.
22 Probably two of the three. And I would imagine quite similar
23 to what Mr. Chaney has represented.

24 THE COURT: Okay. Well, if everybody is correct, that
25 means we finish by midday on Wednesday.

04:01

04:01 1 MR. CLARK: I think that's probably realistic.
2 THE COURT: Okay. All right. All right.
3 MR. COSTA: You're not calling your expert?
4 MR. CLARK: Well, I think that -- in all candor, it
04:01 5 may be redundant. So --
6 MR. COSTA: Based on their expert?
7 MR. CLARK: Based on their expert, we may just go
8 with --
9 MR. McCONNELL: Who is the expert they're calling? Is
04:01 10 it Mr. Beck?
11 MR. CLARK: Mr. Beck.
12 And we've been getting communication from the
13 clerk about the jury instructions. I think we're pretty close
14 on that. I think that there will be an issue that we're going
04:02 15 to raise about ambiguity with the Landmark policy. And, so, I
16 may put together an ambiguity instruction, your Honor, for
17 consideration.
18 THE COURT: Okay. If we do finish by Wednesday, my
19 normal practice, I stay as late as the jury wants to stay. But
04:02 20 Wednesday is an exception. I've got a speaking engagement I
21 committed to nine months ago, and I have got to go do that.
22 So, we can't stay late on Wednesday; but we'll stay late any
23 other night.
24 Normally I -- the way it works in our court is I
04:02 25 charge and then you guys argue. The default procedure in the

04:02 1 pattern jury instructions is you argue and then I charge. You
2 guys -- have you discussed that? Do you have any consensus on
3 that?

4 MR. CLARK: My preference?

04:02 5 MR. COSTA: I prefer the charge first.

6 MR. CLARK: That's my preference.

7 MR. McCONNELL: I prefer the charge first.

8 MR. CHANEY: I think your way. I like that way better
9 than the default.

04:03 10 THE COURT: The useful thing about it is I make a
11 practice of giving copies of the instructions to the jurors.
12 So, the lawyers can stand up and say, "As the instructions note
13 on Page 3, 'beyond a reasonable doubt' means" -- whatever.

14 MR. CLARK: Fine.

04:03 15 THE COURT: All right. Thank you very much. See you
16 at 8:00.

17 MR. CLARK: Thank you.

18 MR. COSTA: Your Honor, we do have -- you said you
19 would take up at the end of the day the matter with
04:03 20 Mr. Hanslik's subpoena.

21 THE COURT: Yeah.

22 MR. COSTA: He is -- I think he's right outside. He
23 didn't want to come in because of the rule.

24 THE COURT: Yes, Mr. Hanslik, if you would approach.

04:03 25 Okay. The subpoena came from which defendant?

04:03 1 MR. CHANEY: From Mr. Carter, your Honor.

2 THE COURT: Okay. And what are you hoping to prove
3 through his documents, then?

4 MR. CHANEY: We wanted to see the e-mail traffic
04:03 5 between Mr. Hanslik and his firm and the government. And
6 it's -- I mean, we served a subpoena on him. It's clearly not
7 privileged.

8 THE COURT: It's not privileged; but it's also not
9 Jencks, right?

04:04 10 MR. CHANEY: I -- not having seen it, I don't know. I
11 mean --

12 THE COURT: Well, Jencks --

13 MR. COSTA: We're not calling him.

14 THE COURT: Yeah. Jencks is something -- a statement
04:04 15 by a witness, and he's not going to be a witness for the
16 government. So then the question is whether it's Brady or
17 Giglio.

18 Normally there has to be some showing that would
19 indicate there is a Brady or Giglio violation. I don't -- all
04:04 20 we have here is what seems to be the irregularities in those
21 e-mails.

22 MR. CHANEY: Government's witness said they were
23 transmitted, many of them, to him by Mr. Hanslik. And, so, it
24 could very well be --

04:04 25 THE COURT: I understand the documentary chain. I'm

04:04 1 just trying to -- you know, my job is to see what category it
2 comes under, because we don't have wide-ranging discovery on
3 the criminal side the way we do on the civil.

4 MR. COSTA: Your Honor, on the e-mails -- and
04:05 5 Mr. Hanslik -- they have the same production from Smith-Reagan.
6 They can check if they have something different, but they have
7 the same thing that Smith-Reagan produced.

8 THE COURT: Well, I thought their concern was they had
9 something directly from Mr. Hanslik that --

04:05 10 MR. COSTA: No. We just passed along what
11 Smith-Reagan gave us. It's really a non-issue. Smith-Reagan
12 produced e-mails to Mr. Hanslik. They have the same
13 Smith-Reagan production -- if there is an issue -- I don't
14 think there is -- with alterations. It happened in
04:05 15 Smith-Reagan giving them to both -- I mean, they have the same
16 thing Mr. Hanslik has.

17 THE COURT: So, any alterations are prior to
18 Mr. Hanslik coming into possession of them?

19 MR. COSTA: Correct. They should have whatever
04:05 20 Smith-Reagan produced. I mean, if they don't -- we turned it
21 over. Smith-Reagan, in the civil case, should have turned it
22 over. I mean, Hanslik didn't give us anything from
23 Smith-Reagan that they don't have.

24 MR. HANSLIK: If I might add, your Honor, what I
04:05 25 received from Smith-Reagan's attorneys were PDF copies of

04:05 1 e-mails that Mr. Swetnam's civil lawyer also received. I gave
2 over PDF's. I didn't have some electronic version that I was
3 able to manipulate or alter. It was a PDF of a document. I
4 hit the print button, and that's -- I mean, that's it.

04:06 5 THE COURT: You sent them hard copies or you sent them
6 PDF?

7 MR. HANSLIK: I don't know if I sent a PDF or a hard
8 copy, to be honest with you. I don't know. But it certainly
9 wasn't --

04:06 10 THE COURT: But it was whatever you got.

11 MR. HANSLIK: Whatever I got from Smith-Reagan, as I
12 got it, they got it. "They" being the government and "they"
13 being Mr. Swetnam's civil attorney.

14 THE COURT: And would -- likewise, Mr. Carter's, too?

04:06 15 MR. HANSLIK: Mr. Carter was not in the case at the
16 time. My understanding was that Mr. Swetnam's civil lawyer
17 gave him access to all of the discovery, including deposition
18 transcripts, because they were codefendants, once he was added.

19 MR. CHANEY: Mr. Carter doesn't have an attorney in
04:06 20 the civil case. He's pro se.

21 And now what we've learned from Mr. Vela is there
22 was some -- what he said the other day was there was some
23 discussion among -- between the hospital and Smith-Reagan's
24 attorney, before the lawsuit, and some negotiation and
04:07 25 agreement to pay money and then the Smith-Reagan lawyer gives

04:07 1 documents to Mr. Hanslik.

2 I'm, frankly, not accusing Mr. Hanslik of
3 altering any documents. I just think that the e-mails back and
4 forth might give -- might shed some light on the -- on what
04:07 5 exactly was shared by the Smith-Reagan lawyers during the time
6 when they're apparently negotiating a settlement and coming up
7 with documents.

8 MR. HANSLIK: Let me be clear on the timeline. There
9 was no communication with any lawyer for Smith-Reagan until
04:07 10 after our lawsuit against Mr. Swetnam was filed.

11 Let me continue.

12 Mr. Swetnam's lawyer in the civil case served a
13 deposition on written question, under the State civil rules of
14 procedure, to Smith-Reagan. That's what prompted their
04:08 15 discovery. He beat me to it. Mr. Swetnam's lawyers beat me to
16 the punch to get Smith-Reagan's documents in discovery. And it
17 was in response to that deposition on written questions, where
18 Mr. Swetnam's lawyer and I believe Smith-Reagan's lawyer worked
19 out an agreement as to what would be produced, that we got
04:08 20 these documents.

21 THE COURT: I mean, so, are you saying you don't have
22 any documents that predate -- well, any documents that are post
23 the relevant time frame but pre-lawsuit, between -- between
24 Smith-Reagan and the government?

04:08 25 MR. HANSLIK: I --

04:08 1 THE COURT: I mean, there's been production of
2 documents as to when the alleged misconduct was going on.

3 MR. HANSLIK: Correct.

4 THE COURT: But I think what Mr. Carter's attorneys
04:09 5 are asking for is whether there were documents after that
6 period but before a lawsuit was filed.

7 Is that it?

8 MR. CHANEY: Your Honor, what we're trying to get is
9 traffic between this witness, e-mail traffic, and his firm and
04:09 10 the government.

11 THE COURT: And I'm just trying to -- okay. And the
12 government.

13 I'm trying to decide whether that's an empty
14 universe. I don't know.

04:09 15 I mean, is there e-mail traffic between you and
16 the government?

17 MR. HANSLIK: Yes. There would be e-mails between
18 Mr. Costa and myself at some point.

19 THE COURT: Were they more than transmittal?

04:09 20 MR. COSTA: That's what I've already turned over after
21 lunch.

22 THE COURT: Those are the ones you turned over?

23 MR. COSTA: I turned over -- those are the
24 pre-indictment ones that I could find during the lunch break:
04:09 25 three.

04:09 1 But now he's going away from the e-mail issue. I
2 mean, he wants -- the government has no problem -- I think it's
3 already been produced; but if Mr. Hanslik wants to turn over
4 all the e-mails that he got in the civil case, from the
04:09 5 Smith-Reagan agency, in that Adobe file, I mean, Mr. --

6 THE COURT: But you're saying that's already been
7 produced. But you said --

8 MR. COSTA: Mr. Swetnam certainly already has them.
9 Mr. Swetnam -- but I don't have any problem with that, one
04:10 10 Adobe being turned -- I mean, if that's the issue, Mr. Hanslik
11 somehow -- from when they got from Smith-Reagan to Hanslik to
12 us there was an alteration --

13 THE COURT: No. I think he's now saying he didn't get
14 what Mr. Swetnam got.

04:10 15 Is that the problem?

16 MR. CHANEY: No, I'm not saying that, your Honor. I'm
17 not saying that Mr. Carter didn't get it, and I'm not saying
18 that the government didn't give us these mysterious e-mails
19 that have big chunks out of them.

04:10 20 What I would like to see is the e-mail traffic
21 that was sent from Mr. Hanslik or his law firm --

22 THE COURT: To the government.

23 MR. CHANEY: -- to the government, that would --

24 THE COURT: Well, Mr. Costa is saying he gave you that
04:10 25 as to the period pre-indictment.

04:10 1 MR. CHANEY: But my subpoena doesn't just limit it to
2 pre-indictment. My subpoena --

3 THE COURT: Well, then, post-indictment it gets a lot
4 trickier. I mean, we're talking about work-product then, I
04:10 5 think.

6 MR. COSTA: Your Honor, what they're really trying to
7 do is -- like I said earlier, I e-mailed Mr. Hanslik and said,
8 "What do you know about their experts," since they were noticed
9 in the civil case. They're trying to get free discovery, but
04:11 10 it just doesn't have any relevance or -- as you said, it's not
11 Jencks. I just don't see -- I mean, that's not Brady, what --
12 those discussions. It's --

13 MR. CHANEY: At the very least, your Honor, since
14 we've served a subpoena on -- I guess this is, in essence, a
04:11 15 motion to quash the subpoena that we served on Mr. Hanslik --

16 THE COURT: I think it is, yeah.

17 MR. CHANEY: -- which I -- I would suggest that he at
18 least be ordered to provide the e-mails that are between he and
19 his firm and the government, to you for an in camera inspection
04:11 20 so that, if nothing else, now --

21 THE COURT: How large a universe is that? Are we
22 talking about dozens of documents or five or --

23 MR. HANSLIK: Your Honor, I don't know. I wouldn't
24 think it would be, in all candor, too voluminous. I haven't
04:11 25 looked. I got this --

04:11 1 THE COURT: Under what theory would you be entitled to
2 those?

3 MR. CHANEY: To see how these -- these e-mails that
4 have these issues, to see the manner in which they're
04:11 5 transmitted --

6 THE COURT: No. But I'm just trying to understand
7 what -- under what category these fall. I mean, they're --

8 MR. COSTA: Well, the government doesn't have any
9 problem -- if he wants -- if all he wants from Mr. Hanslik is
04:12 10 all the e-mails in which he discussed or related those -- the
11 e-mails that are at issue, I mean, I don't have an issue with
12 that. It's probably one e-mail with an Adobe file attached.

13 My concern is these other e-mails that may talk
14 about litigation strategy and issues with their experts. We
04:12 15 have given him the same Adobe that Mr. Hanslik gave us. I
16 mean, I just -- I mean, they have them. I mean, I'm happy to
17 turn it over again. I just don't -- there is no issue --

18 THE COURT: No, that's not what he's asking. That's
19 not what he's asking for.

04:12 20 MR. COSTA: There's really no issue here. I can't
21 tell if he wants -- if it's related to those e-mails from his
22 clients -- he goes -- it's back and forth between that, which
23 they have the same universe we got from Smith-Reagan through
24 Mr. Hanslik --

04:12 25 THE COURT: I understand that point.

04:12 1 MR. COSTA: -- or if he wants everything. I'm just
2 not clear.

3 THE COURT: I think he's asking for what the nature of
4 the communication was, post-indictment, which is between the
04:13 5 Boyer Miller firm and your office. I think that's what is
6 being sought. But I just don't know under what theory that's
7 producible.

8 I mean, I really -- I'm just unwilling to accept
9 the proposition that either the Boyer Miller firm or the US
04:13 10 Attorney for the Southern District altered documents. I just
11 think there's absolutely no suggestion of that.

12 MR. CHANEY: Right. That's true, your Honor.

13 THE COURT: And, then, under what other theory would
14 we produce these documents, then?

04:13 15 I mean, I need a rule book. What -- why would I
16 order that production? I mean, what basis is there for
17 ordering it?

18 MR. CHANEY: There may be, your Honor, in the
19 transmittal of the -- of some of the documents, there might
04:13 20 be -- and I'm -- I agree with what you just said, Judge,
21 that -- I'm not suggesting the United States Attorney's Office
22 has altered any of these e-mails --

23 THE COURT: I didn't think you were.

24 MR. CHANEY: -- and neither am I suggesting it about
04:13 25 Mr. Hanslik or Boyer & Miller.

04:14 1 But there might be, for all I know, comments in
2 some of these e-mails about why the -- the e-mails between the
3 Boyer Miller firm and the government -- about why there are
4 these other e-mails that the government has offered into
04:14 5 evidence.

6 THE COURT: And you think that's Brady material, then?

7 MR. CHANEY: I think that could be, yes.

8 MR. COSTA: I'll represent, if there are any e-mails
9 of that nature, they will be disclosed by tomorrow. I'm
04:14 10 thinking now there are absolutely none.

11 But, you know, the other -- one thing about
12 this -- and I understand that Mr. Carter does not -- he doesn't
13 have to testify, but they have him as a resource. I mean, he
14 would know if there's e-mails missing better than any of us
04:14 15 would. And I haven't heard anything from the attorneys --

16 THE COURT: You said "Mr. Carter" would.

17 MR. COSTA: Mr. Carter would. I mean, he --

18 MR. CHANEY: The problem, your Honor, is Mr. Carter,
19 when he left -- as we heard evidence that he left in the very
04:14 20 end of '07, first part of '08 -- he left his laptop with
21 Smith-Reagan. So, what happened is --

22 THE COURT: He doesn't have that institutional memory
23 now.

24 MR. CHANEY: He has some memory, but he doesn't
04:15 25 have --

04:15 1 THE COURT: But the -- I should have said the computer
2 memory.

3 MR. CHANEY: Exactly, yes. He does not have -- and
4 that's why it's so important that no one --

04:15 5 THE COURT: Well, I think Mr. Costa's offer is a
6 grounds for proceeding. Anything that speaks to alteration of
7 documents, deletion of documents should be produced.

8 MR. COSTA: I'll -- I have no problem with that.

9 THE COURT: Okay.

04:15 10 MR. HANSLIK: What am I supposed to do?

11 THE COURT: Thank you, gentlemen. Thank you.

12 *(Proceedings recessed for evening)*

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14 COURT REPORTER'S CERTIFICATION

15 I certify that the foregoing is a correct transcript from
16 the record of proceedings in the above-entitled cause.

17
18 Date: June 8, 2010

19
20 /s/ Cheryll K. Barron

21 Cheryll K. Barron, CSR, CMR, FCRR
22 Official Court Reporter
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